

Feb 11, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

DONALD ARTHUR LYNCH,
Defendant.

No. 2:13-CR-0008-WFN-25

ORDER DENYING MOTION FOR
SENTENCING MODIFICATION

Pending before the Court is Defendant's Renewed Motion for a Sentencing Modification Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). ECF No. 4590. Defendant asks that the Court reconsider the previous denial of a sentencing reduction. Defendant indicates that the previous motion failed to stress his risk of COVID-19 complications due to his history as a pack-a-day or more smoker. Defendant further argues that he should benefit from sentencing reduction due to his inability to participate in RDAP due to COVID-19 restrictions in place within BOP facilities. Defendant asks that the Court consider these factors in addition to those described in his previous motion.

Even considering the additional factors raised by Defendant's renewed motion, he has not demonstrated that "(i) extraordinary and compelling reasons warrant such a reduction..." 18 U.S.C. § 3582(c)(1)(A). The Court acknowledges that the CDC recognizes being a smoker or former smoker can increase the risks associated with COVID-19. The CDC advises smokers to quit to reduce their risk. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#smoking>. Federal facilities managed by the Bureau of Prisons prohibit smoking by inmates, so presumably Defendant qualifies as a former smoker and has taken the steps advised by the CDC to reduce risk of complications if he were to contract COVID-19.

1 The lost opportunity for a year off through RDAP while lamentable, does not justify
2 reducing Defendant's sentence by 18 months. Qualifying to participate in RDAP does not
3 guarantee that Defendant would have earned the year off his sentence. The Court recognizes
4 that the RDAP program reduces recidivism and providing tools to live a clean and sober life
5 upon release. Treatment for substance abuse issues, whether through RDAP or post-release
6 programs, will greatly benefit Defendant. The Court hopes that Defendant will participate
7 in treatment upon his release. COVID-19 has unfortunately caused the loss of programing
8 that confers great benefits upon inmates, but lack of ability to participate in programing due
9 to a pandemic does not justify a reduction in sentence. Accordingly,

10 **IT IS ORDERED** that Defendant's Renewed Motion for a Sentencing Modification
11 Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), filed February 5, 2021, **ECF No. 4590**, is
12 **DENIED**.

13 The District Court Executive is directed to file this Order and provide copies to
14 counsel.

15 **DATED** this 11th day of February, 2021.

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18 WM. FREMMING NIELSEN
19 SENIOR UNITED STATES DISTRICT JUDGE

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